



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Avenue SE • Bellevue, Washington 98008-5452 • (425) 649-7000

November 19, 2004

REGISTERED MAIL
RR 359 893 315 US

Vaughn Jolley
LaConner Associates LLC
PO Box 1155
La Conner WA 98257

RE: Order #1799
U.S. Army Corps Reference No. 200401163
Water Quality Certification/Coastal Zone Consistency Determination for LaConner Associates LLC for habitat restoration, creosote-treated piling removal, and ramp and floating dock installation, Swinomish Channel, Skagit County, Washington.

Dear Mr. Jolley:

The request for certification for proposed work in and adjacent to the Swinomish Channel has been reviewed. On behalf of the State of Washington, we certify that the proposed work, as conditioned by the enclosed Order, will comply with applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act, as amended, and other appropriate requirements of State law. This letter also serves as the State response to the Corps of Engineers.

Pursuant to 16 U.S.C. 1456 et. seq. (Section 307(c)(3) of the Coastal Zone Management Act of 1972 as amended), Ecology concurs with the applicant's determination that this work will be consistent with the approved Washington State Coastal Zone Management Program. This concurrence is based upon the applicant's compliance with all applicable enforceable policies of the Coastal Zone Management Program, including Section 401 of the Federal Water Pollution Control Act.

This certification is subject to the conditions contained in the enclosed Order. If you have any questions, please contact Rebekah Padgett at (425) 649-7129. Written comments can be sent to her at the Department of Ecology, 3190 160th Avenue SE, Bellevue, WA 98008, or by e-mail at rp461@ecy.wa.gov. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Jeannie Summerhays
Section Manager
Shorelands and Environmental Assistance Program

Enclosure
JS:RP:rc

cc: Randel Perry, Corps of Engineers
Brian Williams, Fish and Wildlife

John Doyle, Town of La Conner



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| IN THE MATTER OF GRANTING A |) | ORDER # 1799 |
| WATER QUALITY |) | Corps Reference No. 200401163 |
| CERTIFICATION TO |) | Habitat restoration; replace and add wood |
| LaConner Associates LLC |) | decking; remodel of building; replacement and |
| in accordance with 33 U.S.C. 1341 |) | installation of floating pier with ramp and piling, |
| FWPCA § 401, RCW 90.48.120, RCW |) | at Swinomish Channel, LaConner, Washington. |
| 90.48.260 and Chapter 173-201A WAC |) | |

TO: Vaughn Jolley
LaConner Associates LLC
P.O. Box 1155
LaConner WA 98257

On October 21, 2004, a public notice for a proposed water quality certification from the State of Washington was distributed for the above-referenced project pursuant to the provisions of 33 U.S.C. 1341 (FWPCA §401). The proposed project consists of habitat restoration the upper intertidal zone of the Swinomish Channel, replacement of 3,263 square feet and the addition of 660 square feet of wood decking for public use, remodel of an existing 1,800-square-foot over-water building, replacement and installation of a new 10-by-333-foot floating pier with a 5-by-50-foot ramp and 12 new piling. The project will provide public access to the Swinomish channel and permanent/transient moorage of boats.

AUTHORITIES:

In exercising authority under 33 U.S.C. 1341, 16 U.S.C. 1456, RCW 90.48.120, and RCW 90.48.260, Ecology has investigated this application pursuant to the following:

1. Conformance with applicable water quality-based, technology-based, and toxic or pretreatment effluent limitations as provided under 33 U.S.C. Sections 1311, 1312, 1313, 1316, and 1317 (FWPCA Sections 301, 303, 306 and 307);
2. Conformance with the state water quality standards as provided for in Chapter 173-201A WAC authorized by 33 U.S.C. 1313 and by Chapter 90.48 RCW, and with other appropriate requirements of state law; and
3. Conformance with the provision of using all known, available and reasonable methods to prevent and control pollution of state waters as required by RCW 90.48.010.

CONDITIONS OF ORDER #1799 AND WATER QUALITY CERTIFICATION:

In view of the foregoing and in accordance with 33 U.S.C. 1341, 90.48.260 RCW and Chapter 173-201A WAC, water quality certification is granted to LaConner Associates LLC subject to the following conditions:

A. No Impairment of Water Quality:

- A1. The Swinomish Channel [WRIA 3] is classified as Class A waters of the state. Certification of this proposal does not authorize LaConner Associates LLC to exceed applicable state water quality standards (Chapter 173-201A WAC) or sediment quality standards (Chapter 173-204 WAC). Water quality criteria contained in WAC 173-201A-030(1) and WAC 173-201A-040 shall apply to this project, unless otherwise authorized by Ecology. This Order does not authorize temporary exceedances of water quality standards beyond the limits established in WAC 173-201A-110(3). Furthermore, nothing in this certification shall absolve LaConner Associates LLC from liability for contamination and any subsequent cleanup of surface waters or sediments occurring as a result of project construction or operations.

B. Project Mitigation:

- B1. Impacts to aquatic resources shall be mitigated through measures described in the following documents, except as modified by this Order:
- LaConner Associates Mitigation Plan for the Shoreline Redevelopment dated July 28, 2004, by Chris Fairbanks.

C. Construction:

- C1. Construction Stormwater and Erosion Control: Work in or near waters of the state shall be done so as to minimize turbidity, erosion, and other water quality impacts. Construction stormwater, sediment and erosion control Best Management Practices suitable to prevent exceedances of state water quality standards (e.g., hay bales, detention areas, filter fences, etc.), shall be in place before starting grading and gravel placement work at the shoreline.
- C2. Inwater construction: All best management practices for protection of water quality during pile extraction, pile driving, and overwater demolition and construction shall be followed.
- C3. All construction debris including existing creosote piling shall be properly disposed of on land so that it cannot enter a waterway or cause water quality degradation to state waters.
- C4. Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment or working areas shall be contained for proper disposal, and shall not be discharged into state waters or storm drains.

C5. LaConner Associates LLC shall provide notice to Ecology's Rebekah Padgett at least 3 days prior to the start of construction or shoreline work. Notification can take place by e-mail to rpad461@ecy.wa.gov, telephone to (425) 649-7129, fax to (425) 649-7098, or in writing.

C6. Clean Fill Criteria: LaConner Associates LLC shall ensure that fill, including gravel, placed for the proposed project does not contain toxic materials in toxic amounts.

D. Emergency/Contingency Measures:

D1. In the event LaConner Associates LLC is unable to comply with any of the permit terms and conditions due to any cause, LaConner Associates LLC shall:

- Immediately take action to stop, contain, and clean up unauthorized discharges or otherwise stop the violation and correct the problem.
- Notify Ecology of the failure to comply. Spill events shall be reported immediately to Ecology's 24-Hour Spill Response Team at (425) 649-7000, and within 24 hours to Ecology's Rebekah Padgett at (425) 649-7129.
- Submit a detailed written report to Ecology within five days that describes the nature of the violation, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of any samples taken, and any other pertinent information.

Compliance with this condition does not relieve LaConner Associates LLC from responsibility to maintain continuous compliance with the terms and conditions of this Order or the resulting liability from failure to comply.

D2. Fuel hoses, oil drums, oil or fuel transfer valves and fittings, etc., shall be checked regularly for drips or leaks, and shall be maintained and stored properly to prevent spills into state waters. No refueling of equipment shall occur over, or within 50 feet of the Swinomish Channel.

E. General Conditions:

E1. For purposes of this Order, the term "Applicant" shall mean LaConner Associates LLC and its agents, assigns, and contractors.

E2. This certification does not exempt and is provisional upon compliance with other statutes and codes administered by federal, state, and local agencies.

E3. The Applicant will be out of compliance with this certification if the project is constructed and/or operated in a manner not consistent with the project description

contained in the Public Notice for certification, or as otherwise approved by Ecology. Additional mitigation measures may be required through other local, state, or federal requirements.

- E4. The applicant will be out of compliance with this certification and must reapply with an updated application if five years elapse between the date of the issuance of this certification and the beginning of construction.
- E5. The applicant will be out of compliance with this certification and must reapply with an updated application if the information contained in the Public Notice is voided by subsequent submittals to the federal agency. Any future action at this project location, emergency or otherwise, that is not defined in the Public Notice, or has not been approved by Ecology, is not authorized by this Order. All future actions shall be coordinated with Ecology for approval prior to implementation of such action.
- E6. Copies of this Order shall be kept on the job site and readily available for reference by Ecology personnel, the construction superintendent, construction managers and foremen, and state and local government inspectors.

To avoid violations or non-compliance with this Order, the applicant shall ensure that project managers, construction superintendents, and other responsible parties have read and understand relevant aspects of this Order and any subsequent revision or Ecology-approved plans.

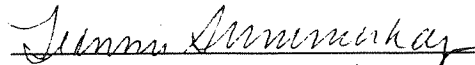
- E7. The applicant shall provide access to the project site upon request by Ecology personnel for site inspections, monitoring, necessary data collection, or to ensure that conditions of this Order are being met.
- E8. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines further actions are necessary to implement the water quality laws of the state. Further, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project construction or operation are identified (e.g., violations of water quality standards, downstream erosion, etc.), or if additional conditions are necessary to further protect the public interest.
- E9. Liability: Any person who fails to comply with any provision of this Order shall be liable for a penalty of up to ten thousand dollars (\$10,000) per violation for each day of continuing noncompliance.

Appeal Process:

Any person aggrieved by Order #1799 may obtain review thereof by appeal. Pursuant to Chapter 43.21B RCW, a person can appeal this order to the Pollution Control Hearings Board within 30

days of the date of receipt of this Order. Any such appeal must be sent to the Washington Pollution Control Hearings Board, PO Box 40903, Olympia, WA 98504-0903. Concurrently, a copy of the appeal must be sent to the Department of Ecology, Shorelands and Environmental Assistance Program, Attn: Loree' Randall, PO Box 47600, Olympia, WA 98504-7600. These procedures are consistent with the provisions of Chapter 43.21B RCW and the rules and regulations adopted thereunder.

Dated November 19, 2004, at Bellevue, Washington.



Jeannie Summerhays, Section Manager
Shorelands and Environmental Assistance Program
Department of Ecology
State of Washington